

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking _____

ORDER INSTITUTING RULEMAKING**1. Summary**

This rulemaking continues implementation and administration of the California Renewables Portfolio Standard (RPS) Program, as a successor proceeding to Rulemaking (R.) 01-10-024 and R.04-04-026.¹ We coordinate this proceeding with several others addressing related matters.² Here, we continue ongoing oversight, including the annual RPS procurement cycle, reporting, compliance, and enforcement. We also consider limited, specific policy issues related to ongoing implementation and administration.

¹ The California RPS Program was established by Senate Bill (SB) 1078 (Stats. 2002, Ch. 516, Sec. 3, codified as Pub. Util. Code §§ 399.11 et seq., chaptered September 12, 2002, effective January 1, 2003).

² For example, Investigation (I.) 05-09-005 (facilitating proactive development of transmission infrastructure to access renewable energy resources), R.06-02-012 (examining additional methods to implement the RPS program, and the potential for using renewable energy credits (RECs) for compliance with RPS requirements), and R.06-02-013 (integrating a comprehensive set of procurement policies and reviewing long-term procurement plans).

2. Background

A. Program Background

The RPS Program seeks to increase the amount of California's electricity generation from renewable resources to meet several purposes. These purposes include, but are not limited to, increasing the diversity of generation resources, enhancing electric reliability, protecting public health, improving environmental quality and benefits, promoting stable electricity prices, stimulating economic development, creating new employment opportunities, and reducing reliance on foreign fuels.

To achieve RPS Program objectives, each California electrical corporation is required to procure a minimum quantity of electricity from eligible renewable energy resources as a specific percentage of total retail energy sales. Each electrical corporation is also required to increase its total procurement of electricity from eligible renewable resources each year by 1% of total sales, reaching 20% by 2010.

Eligible renewable resources include photovoltaic; wind; geothermal; solar thermal; thermal from combustion of biomass fuel, digester gas, or landfill gas; small hydroelectric; ocean wave, ocean thermal or tidal current; fuel cells using renewable fuels; municipal solid waste conversion; and other renewable resources determined by the California Energy Commission. Electrical corporations include every corporation or person owning, controlling, operating or managing any electric plant for compensation within California (with limited exceptions), and also include electricity service providers and community choice aggregators.

The Commission is directed to implement and administer the RPS Program. In doing so, the Commission is required to (a) direct each electrical

corporation to prepare renewable energy procurement plans; (b) review and accept, modify or reject each plan; (c) review contracts submitted for Commission approval based on consistency with the approved plan; and (d) to enforce its orders. Electrical corporations are permitted reasonable flexibility in complying with program requirements, but are subject to penalties for failure to comply.

The Commission currently implements this program via annual RPS solicitations. We review proposed RPS plans; accept, modify or reject each plan; and oversee electrical corporation solicitations. We direct the calculation of annual procurement targets, and set dates for periodic reports. We conduct compliance reviews and expect later in 2006 to begin enforcement proceedings, as necessary.

B. Procedural Background

On August 22, 2001, in anticipation of SB 1078's passage, the Commission ordered a solicitation by each utility of electricity generated from renewable resources of at least an additional one percent of the utility's actual energy and capacity needs. (Decision (D.) 02-08-071.) We began specific implementation of the RPS legislation in R.01-10-024 once SB 1078 became effective. As required by the Legislature, within six months we adopted the first of several decisions to set initial parameters and requirements.³ (D.03-06-071.)

³ These included: (a) a process for determining the market price of electricity, (b) criteria for the rank ordering and selection of least cost/best fit (LCBF) renewable resources, (c) flexible compliance rules, and (d) an approach to forming standard contract terms and conditions.

In April 2004, we opened R.04-04-026 to continue implementation of the RPS program. Through May 2006, we have filed many decisions in R.04-04-026, addressed many issues, and have now accomplished the goals stated in the Scoping Memo.⁴ In a separate order, R.04-04-026 has been, or soon will be, closed.

In February 2006, we opened R.06-02-012 to continue our work on certain RPS matters, such as implementation of the RPS program for other electrical corporations (e.g., ESPs, CCAs, small and multi-jurisdictional utilities), exploration of the use of contracts of less than 10 years' duration, and examination of RECs. We also need a vehicle for more generalized ongoing implementation and administration. We open this proceeding as a successor to R.04-04-026 for that purpose.

4. Preliminary Scoping Memo

In accordance with Rule 6(c)(2) of the Commission's Rules of Practice and Procedure (Rules), a preliminary scoping memo is included in this Order Instituting Rulemaking (OIR). This scoping is contained below in the discussion of issues, preliminary determination of category, preliminary determination of need for hearing, and schedule.

⁴ These decisions have addressed, among other things, adoption of a market price referent (MPR) methodology; adoption of standard contract terms and conditions; adoption of criteria for selection of LCBF renewable resources; conditional approval of RPS plans and requests for offers for the 2005 solicitations; conditional approval of the long-term RPS plans; establishing the basic parameters for participation of electric service providers (ESPs), community choice aggregators (CCAs), and small and multi-jurisdictional utilities; adoption of the 2005 MPR methodology; and conditional approval of RPS plans for the 2006 solicitations.

5. Issues

As we said in February 2006 upon instituting R.06-02-012, we consider certain matters in R.06-02-012 but also consider other matters in R.04-04-026 and this, its successor proceeding. The matters for this proceeding include continuing oversight of the annual RPS procurement cycle, reporting, compliance, enforcement, and other elements of ongoing implementation and administration. As also indicated in R.06-02-012, once policy decisions are made on the issues before us in R.06-02-012 (e.g., RECs), we expect their implementation and enforcement to be accomplished in R.04-04-026 and its successor proceedings, or other proceedings, as appropriate.

We list the issues for this rulemaking below.

1. Oversight of annual procurement cycle
2. Reporting
 - Consider improvements based on February 2006 Energy Division Staff White Paper and comments
 - Consider periodic reports filed on renewables procurement (e.g., annual procurement target compliance reports)
3. Compliance and enforcement
4. Other ongoing implementation and administration, such as
 - Motions regarding confidentiality (from R.04-04-026)
 - MPR
 - Transmission ranking cost reports
 - Possible changes to the procurement cycle
 - Risk-sharing
 - Standard contract terms and conditions
 - Repowering

- Implementation of decisions from R.06-02-012, and coordination with other proceedings
- Other specific proposals that might be made by parties or identified as otherwise necessary to implement and administer the RPS program (e.g., to increase transparency, reduce complexity, facilitate equal treatment, improve application of LCBF criteria, develop better assessments of project viability, improve treatment of bid and other deposits.)

We will not address issues here that are being addressed elsewhere, particularly those specifically identified in the Scoping Memo of another proceeding. For example, the Scoping Memo in R.06-02-012 identifies 9 issues (plus creditworthiness; see R.06-02-012 Scoping Memo at pages 3-5), which we summarize below, and which we will not address here:

- Participation of ESPs, CCAs, and small and multi-jurisdictional utilities in the RPS Program (including use of procurement entities to facilitate their RPS procurement)
- The use of contracts of less than 10 years' duration
- Use of RECs for RPS compliance

Once each policy is decided in R.06-02-012, however, we intend implementation and enforcement of those decisions to be in this proceeding, and its successor or other proceedings, as necessary.

6. Preliminary Determination of Category

Our Rules require that an OIR preliminarily determine the category of the proceeding. (Rule 6(c)(2).) As a preliminary matter, we determine this proceeding is ratesetting. (Rule 5(c).) This is based on our ongoing implementation and administration of the RPS Program, particularly as part of the larger procurement process, which impacts respondents' rates. This is consistent with our categorizations of R.04-04-026 and R.06-02-012.

7. Preliminary Determination of Need for Hearing

Our Rules also require that the OIR preliminarily determine the need for hearing. (Rule 6(c)(2).) Although we expect that many of the issues may be resolved through the formal filing of comments and replies, we preliminarily determine that hearing will be needed, at least on some issues.

8. Responses to OIR

Any person who objects to the preliminary categorization of this rulemaking as ratesetting, the preliminary determination that hearing will be needed, or the preliminary scoping memo, shall state those objections in its response to the OIR. (Rule 6(c)(2).) This response is due 10 days from the mailing of this OIR. (See schedule below.) The Assigned Commissioner will issue a scoping memo after considering comments on the preliminary scoping memo. The scoping memo will rule on the category, need for hearing and scope. (Id.) The final determination as to category is subject to appeal as specified in Rule 6.4.

9. Schedule

The schedule is:

SCHEDULE

LINE NO.	ITEM	DATE
1	OIR Adopted	May 25, 2006
2	Response to OIR	10 days from mailing of OIR
3	PHC Statements filed	June 20, 2006
4	PHC at 10 a.m.	June 22, 2006

Responses shall be filed and served within 10 days of the date this order is mailed. A prehearing conference (PHC) shall be held at 10 a.m. on June 22, 2006 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California.

PHC Statements may be filed and served by June 20, 2006. PHC Statements may address the schedule; issues; category; need for hearing; *ex parte* rules; any matter a party seeks to raise at the PHC; and anything else necessary for the efficient, effective and equitable conduct of this proceeding. (Rule 6.2.) The Assigned Commissioner or the assigned Administrative Law Judge (ALJ) may alter the schedule to promote efficient and fair administration of this proceeding. A schedule for the remainder of the proceeding will be adopted in the Assigned Commissioner's Scoping Memo.

This proceeding will conform to the statutory case management deadline for ratesetting matters set forth in Pub. Util. Code § 1701.5. In particular, it is our intention to resolve all relevant issues within 24 months of the date of the Assigned Commissioner's Scoping Memo. This is consistent with the 24 month period adopted in R.06-02-012. In using the authority granted in § 1701.5(b) to set a time longer than 18 months, we consider the number and complexity of the tasks, the need to coordinate with other proceedings, the processes and role of the Energy Commission (e.g., verify deliveries; determine supplemental energy payments), and the 24-month schedule in R.06-02-012. We also recognize that this is an ongoing program, and will likely take further active Commission involvement through 2010 or beyond. As such, we will most likely need to issue a successor OIR after this OIR is closed.

10. Respondents

We name as respondents here all electrical corporations and entities so named in R.06-02-012. This includes large electric utilities, small electric utilities,

multi-jurisdictional electric utilities and ESPs. It also includes City of Chula Vista (CCV) and City and County of San Francisco (CCSF), who were named respondents in R.06-02-012 based on their self-identification as prospective CCAs. (See Appendix A for a list of respondents.)

Moreover, as we stated in R.06-02-012, any ESP that, subsequent to the date of this OIR, becomes registered to provide service within the service territory of one or more of the respondent electrical corporations through direct access transactions shall automatically, as a result of that registration, become a respondent to this proceeding upon such registration. Any ESP withdrawing its registration should notify the assigned ALJ within five days of effectuating the withdrawal of its registration.

Further, any CCA (other than CCV and CCSF) that, subsequent to the date of this OIR, becomes registered to provide service within the service territory of one or more of the respondent electrical corporations through CCA transactions shall automatically, as a result of that registration, become a respondent to this proceeding upon such registration. All entities considering becoming CCAs, even if they are at the early stages of their consideration, are encouraged to participate in this proceeding.

We state our expectation of the degree of respondents' participation, and repeat our view regarding micro utility respondents, as stated in R.02-06-012. All large respondents shall fully participate in all matters and all phases of this proceeding. In addition, all respondents shall fully comply with orders of the Assigned Commissioner or ALJ regarding specific participation.

We are also mindful that some micro utilities may be overwhelmed by our proceedings. We will not expect their participation on any but core issues which concern micro utilities. (Pub. Util. Code §§ 2780 and 2780.1.) These issues, for

example, might include, but are not necessarily limited to: MPR, possible changes to the procurement cycle, the filing of certain reports, and the filing of draft RPS procurement plans for Commission consideration. Failure of a small entity or micro utility to participate on an issue, however, does not excuse that entity or utility from compliance with any subsequent order of the ALJ, Assigned Commissioner or the Commission.

11. Parties and Service List

This proceeding is a successor to R.04-04-026. Therefore, we continue the service list from R.04-04-026. Because we include as respondents here all electrical corporations and entities also named as respondents in R.06-02-012, we also incorporate the service list from R.06-02-012. This includes an additional 30 appearances from R.06-02-012 who are not now appearances in R.04-04-026. Persons, entities and information only participants on either service list need take no further action to be in the appearance, state service or information only category of this proceeding.

We will also serve this order on those who are on the service lists for the following related proceedings:

- R.06-02-013 (procurement policies and long-term procurement plans);
- R.05-12-013 (resource adequacy);
- R.06-03-004 (distributed generation and California solar initiative); and
- I.05-09-005 (renewables transmission investigation).

Persons receiving this OIR, however, who are not on the initial service list (produced from the combination of service lists from R.04-04-026 and R.06-02-012) will not automatically become part of the service list for this proceeding absent specific request. Persons who are not now in, but wish to be added to, the appearance category may so request at the PHC, or file and serve a

motion. Persons who wish to be in the state service or information only category may do so by letter to the Process Office.

It is the responsibility of each person or entity to notify the Process Office of his or her current postal service mailing address, current electronic-mail address, and any changes or corrections. (Rule 2.3(h).) The Process Office may be reached via e-mail at: ALJ_Process@cpuc.ca.gov; or via mail at: Process Office, CPUC, 505 Van Ness Avenue, San Francisco, California, 94102. The service list will be posted on the Commission's web site, at www.cpus.ca.gov. Parties must use the latest service list for service of each pleading over the course of this proceeding.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY – toll free) or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

Electronic service of documents in Commission proceedings is governed by Rules 2.3 and 2.3.1. All participants are encouraged to use electronic service. In addition, a paper copy must be served on the ALJ. (Rule 2.3.1(f).)

12. Collaborative Process with the California Energy Commission (CEC)

In both R.01-10-024 (RPS Phase) and R.04-04-026, our Commission staff worked collaboratively with the staff of the CEC. That collaborative staff relationship will also be continued in this proceeding. As has been the case in the past, the Commission's Executive Director may work with the CEC's Executive Director to review and refine the terms of the collaboration and the staff involved in it.

13. Ex Parte Communications

In accordance with Rule 7(a)(4), *ex parte* communications in this proceeding are governed by the requirements of Rules 7(c) and 7.1.

Findings of Fact

1. A successor proceeding is necessary to continue implementation and administration of the RPS Program.
2. It is reasonable to continue implementation and administration of the RPS Program through a new rulemaking.
3. It is reasonable to incorporate the record from R.04-04-026 into this proceeding.
4. In view of the complexity of the items in this and related proceedings, it is reasonable to have this proceeding extend for 24 months from the date of the Assigned Commissioner's Scoping Memo.

Conclusions of Law

1. A new rulemaking should be opened to continue RPS Program implementation and administration.
2. The record in R.04-04-026 should be incorporated into this proceeding.
3. This proceeding should extend for 24 months from the date of the Assigned Commissioner's Scoping Memo.

O R D E R

IT IS ORDERED that:

1. This rulemaking is opened to continue implementation and administration of the California Renewables Portfolio Standard Program.
2. The record in Rulemaking (R.) 04-04-026 is incorporated into the record here.

3. Respondents to this proceeding are listed in Appendix A, including all electrical corporations subject to Pub. Util. Code §§ 399.11 et seq., registered electric service providers, City of Chula Vista, and City and County of San Francisco.

4. The initial service list shall be all persons and entities now on the service lists for R.04-04-026 and R.06-02-012, including appearances (as respondents, interested parties, intervenors, or others), state service participants, and information only participants.

5. Persons who are not now in, but wish to be added to, the appearance category of the service list may so request at the prehearing conference (PHC), or file and serve a motion.

6. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served on the initial service list for this proceeding and the service lists in R.06-02-013, R.05-12-013, R.06-03-004, and Investigation 05-09-005.

7. The category of this proceeding is preliminarily determined to be ratesetting, and evidentiary hearing is preliminarily determined to be necessary.

8. Responses to this OIR shall be filed and served within 10 days of the date this OIR is mailed. Any person objecting to the preliminary categorization of this rulemaking, the preliminary determination regarding hearing, or to the preliminary scoping memo, shall state the objection in response to the OIR.

9. A PHC shall be held at 10 a.m. on June 22, 2006 in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California. Respondents and parties may there address category of proceeding, need for hearing, matters discussed in the preliminary scoping memo, and other procedural matters. PHC Statements may be filed, and shall be filed and served by June 20, 2006.

10. This OIR may extend up to 24 months from the date of the Assigned Commissioner's Scoping Memo.

11. *Ex parte* communications are governed by Rule 7(c) and 7.1.

12. The Assigned Commissioner or the assigned Administrative Law Judge may issue rulings as needed to change the schedule and to appropriately manage this proceeding.

This order is effective today.

Dated May ___, 2006, at San Francisco, California.

APPENDIX A: RESPONDENTS
(See Appendices A and B to R.06-02-012)

Large Utilities

Pacific Gas and Electric Company
Southern California Edison Company
San Diego Gas & Electric Company

Small and Multi-Jurisdictional Utilities

Pacificorp
Sierra Pacific Power Company
Mountain Utilities
Avista Utilities
Central California Power
Golden State Water/Bear Valley Electric

Registered Electric Service Providers

New West Energy
Constellation NewEnergy, Inc.
3 Phases Energy Services
AOL Utility Corp.
American Utility Network
CalPine PowerAmerica-CA, LLC
Pilot Power Group, Inc.
Occidental Power Services, Inc.
Commerce Energy, Inc.
Energy America, LLC
Strategic Energy, Ltd.
Coral Power, LLC
APS Energy Services Company, Inc.
Sempra Energy Solutions
City of Corona Dept. of Water & Power
Praxair Plainfield, Inc.

Prospective Community Choice Aggregators

City of Chula Vista
City and County of San Francisco

(END OF APPENDIX A)